SUPREME COURT, U. S.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1961.

No. 338

AAA MOTOR LINES, INC., a Corporation,
Petitioner,

vs.

ALABAMA PUBLIC SERVICE COMMISSION, P. C. WHITE TRUCK LINE, INC., a Corporation, and JAMES R. CATON, d/b/a CATON TRANSFER COMPANY,
Respondents.

PETITION FOR A WRIT OF CERTIORARI

To the Supreme Court of Alabama.

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To the Supreme Court of Alabama.

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Alabama, entered in the above entitled case on March 23, 1961.

OPINIONS BELOW.

The opinion of the Supreme Court of Alabama is reported at ... Ala. ..., 131 So. 2d 172, and is appended hereto as Appendix A. The judgment and opinion of the

Circuit Court of Montgomery County, Alabama, is unreported, and is appended hereto as Appendix B. The decisions and orders of the Alabama Public Service Commission dated January 7, 1957, and April 23, 1957, are unreported and are appended hereto as Appendices C and D, respectively. Petitioner's "Petition for Stay of Mandate" filed in the Supreme Court of Alabama on June 28, 1961, and that Court's order of the same date granting said stay are unreported and are appended hereto as Appendices E and F, respectively.

JURISDICTION.

The opinion and judgment of the Supreme Court of Alabama were dated and entered on March 23, 1961. Petitioner filed its petition for rehearing on April 7, 1961, and the same was overruled by the Supreme Court of Alabama on June 22, 1961. The jurisdiction of this Court is invoked under 28 U. S. C., Sec. 1257 (3).

QUESTIONS PRESENTED FOR REVIEW.

1. After petitioner had been operating for many years serving an area of Alabama as a common carrier under a public convenience and necessity certificate granted by the Alabama Public Service Commission, is petitioner deprived of due process of law under the 14th Amendment to the Constitution of the United States by a decision and judgment of the Alabama Supreme Court having the undisputed established fact of public convenience and necessity before it, which decision voids the long-standing rights of petitioner to serve the area on the ground that there was doubt as to the exact quantum of service intended to be authorized, and which decision removed from petitioner all tribunals, administrative or judicial, and all procedures theretofore open to it for the protection of some or all of those long-established rights of service?

2. Has the petitioner been deprived of due process of law under the 14th Amendment to the Constitution of the United States by an opinion and judgment of the Supreme Court of Alabama, rendered unexpectedly at the end of the proceeding, which voided long-existing orders of the Alabama Public Service Commission granting rights to petitioner to serve a certain area of Alabama as a common carrier, on the basis that there was doubt as to the exact quantum of service sought to be authorized?

3. Is it a violation of due process of law or of equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States for the Alabama Supreme Court to deprive the public at large of all service by a common carrier undisputedly found to be required by the public convenience and necessity on the ground that as a matter of construction of the order granting the service there is doubt as to the exact quantum of service intended to be authorized?

4. Where there has been a quasi-judicial determination by the Alabama Public Service Commission and a judicial determination by a trial court, both rendered after hearings on evidence, that the public convenience and necessity require service by a common carrier under grant of intra-state rights, and a majority of the goods carried by said carrier in the exercise of such rights are goods moving in interstate commerce, is it a violation of Article I, Section 8, Clause 3 of the Constitution of the United States for the Alabama Supreme Court to deprive the public at large of all service by the common carrier under such rights on the ground that there is doubt as to the exact quantum of service intended to be authorized?

STATUTES INVOLVED.

The Fourteenth Amendment, Section 1, of the Constitution of the United States is involved:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article I, Section 8, Clause 3 of the Constitution of the United States is involved:

> "The congress shall have power: . . . To regulate commerce with foreign nations, and among the several states, and with the Indian tribes; . . ."

STATEMENT OF THE CASE.

There are no disputed facts before this Court in this case. There are no statutes and no legislative or administrative actions to review.

Petitioner complains of the act of the Alabama Supreme Court, done unexpectedly at the end of a long series of proceedings, done ex mero motu, which act in and of itself deprives petitioner and the public at large of valuable procedural and property rights guaranteed by the due process clause of the Fourteenth Amendment, and which act is repugnant to the commerce clause of the Federal Constitution.

Petitioner, AAA Motor Lines, Inc. (hereinafter referred to as "petitioner" or "AAA") is a common carrier of

general commodities. At all material times prior to October 7, 1955, it operated under Certificate 936 of the Alabama Public Service Commission (hereinafter referred to as "the Commission") along routes extending from Birmingham, Alabama, on the north, through Montgomery and into an area comprising a portion of southeast Alabama (R. 46-56).

On October 7, 1955, petitioner applied to the Commission for an amendment of its certificate extending its rights so that its routes could serve a new area in South Alabama which was generally west of that position already being served in southeast Alabama (R. 259-276).

After a long public hearing the Commission entered its order on Jan. 7, 1957 (R. 248-249, Appendix C) finding "that the present and future public convenience and necessity require the service hereinafter authorized." It ordered that AAA's certificate be "amended to include in addition to the authority now contained therein authority to operate as a common carrier of general commodities . . . over regular routes as follows," and the extensions asked by AAA then were set out in detail in the order (R. 248-249; Appendix C).

Immediately after the order of Jan. 7, 1957, was entered, AAA commenced to render service over its routes as extended by the order. There was a large demand for AAA's service between the newly-served area and urban centers, and the service rendered was satisfactory to the public (R. 343-414, 460-474, 476-480).

After certain of the carriers who intervened in the trial of this case filed before the Commission a "Petition for Reconsideration or Rehearing" (R. 244-247), and after several continuances were granted on said petition by the Commission (R. 240-242, 238-239, 234-235), oral argument was had thereon on March 12, 1957, but no new evidence was taken (R. 234).

On April 23, 1957, the Commission issued its "Report and Order upon Reconsideration and Rehearing" (R. 230-233), finding that "the present and future public convenience and necessity require the service authorized by the original order in this cause issued January 7, 1957." It again found AAA fit, willing and able. Then, although it made no finding that such a limitation was required by public convenience and necessity, it ordered that the authority contained in the order of January 7 could not be used in combination with the authority contained in AAA's certificate prior to said order, in performing service between points theretofore authorized to be served, on the one hand, and those authorized to be served by the order of January 7, on the other. Apparently the Commission was attempting to prevent the new areas served by the Jan. 7 order from being tacked on to those theretofore served by Certificate 936. That is, the April 23rd order limited AAA's service in the new area to intratown service between the towns therein.

The Commission's attempted limitation of April 23, 1957, read in part (R. 230-233, Appendix D):

> "The authority contained in said order of January 7, 1957, may not be used in combination with the authority contained in Certificate No. 936 prior to January 7, 1957, in performing service between points theretofore authorized to be served in said Certificate No. 936 on the one hand, and those authorized to be served by the said order of January 7, 1957, on the other hand."

The order of limitation of April 23, 1957, made the situation one of chaos and confusion. Petitioner contended before the trial court, and the trial court found (R. 497), that the Commission at all times had treated AAA's application as one for extension of its existing rights, and all parties and witnesses had been concerned with traffic

into the newly-served area from urban centers as Birmingham and Montgomery and out of the area to such centers, and it had been plain throughout that no one involved had in mind or considered the lesser need for intra-town service between the several small towns in the new area (R. 497).

Immediately after the order of April 23, counsel for AAA advised the company that the April 23 order was illegal (R. 496)[1] and commenced negotiations with the Commission (R. 496). Controversy between the carrier and the Commission continued for several months (R. 6-7, 229-230, 309-314) until the parties (including the respondents herein) agreed that the declaratory judgment action, filed in the interim by AAA would take precedent over any actions of the Commission (R. 314).

As stated, petitioner, on June 18, 1957, filed a bill for declaratory judgment in the Circuit Court of Montgomery

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[1] For instance, as pointed out, the effect of the April 23 order was to limit AAA's service in the new area to intra-town service between the towns therein. Thus service by AAA for the affected towns to and from urban areas was wholly eliminated. In lieu thereof the Commission substituted a service which AAA had not sought and the need and convenience for which was wholly without support in the evidence. The Commission on Jan. 7 had found that public convenience and necessity required the extensions sought by AAA, and it reiterated this finding in its April 23, order. Then it added a restriction the effect of which was to severely limit and cripple both these findings, for as pointed out by the lower court the service as restricted was in practical effect little service at all (R. 497).

The April 23 order also left AAA in a dilemma as to whether to serve Shorterville and a radius of eight miles therefrom, where construction of the Ft. Gaines Dam is under way. The only road to Shorterville and the dam site is from Abbeville, the nearest town, *which was a point served by AAA before its rights were extended*. Therefore, as best its counsel could tell AAA was restricted from hauling from anywhere to Shorterville or Shorterville to anywhere else (R. 497-498).

In addition, although the Commission twice had sent out notices to the parties describing the cause as "On Further Hearing" (R. 230, 234-235) it conducted the hearing on March 12 without hearing further evidence (R. 234).

County, Alabama (R. 2-8), alleging that the restriction imposed in the Order of April 23, 1957, was "unwarranted, unlawful, illegal, arbitrary" and "capricious" (R. 5), which, if enforced, would cause petitioner "irreparable injury and damage" (R. 6), and that there was existing "an actual controversy between the plaintiff and defendant on which substantial property rights are dependent" (R. 7). Petitioner sought from the said trial court a decree declaring that the limitation of April 23, 1957, was null and void and declaring that petitioner could operate over the highways as authorized by the Commissioner's order of January 7, 1957 (R. 7-8).

Forthwith after the said agreement was entered submitting the issues to the trial court (R. 314), the Commission filed its answer (R. 8-9) admitting all of the facts in the complaint to be substantially true and correct and denying that the limitation of April 23, 1957, was unlawful, illegal, arbitrary or capricious (R. 8-9). Certain carriers (including the named respondents in this petition) intervened in the declaratory judgment suit and adopted all of the allegations of the Commission's answer (R. 10-12, 13-15).

It is apparent, therefore, and it is an undisputed fact, that the only matter before the trial court was the validity and construction of the April 27, 1957, order.

The trial court conducted a hearing in open court, took additional evidence, and, on June 10, 1958, entered its order (R. 495-499, Appendix B) finding, inter alia, that the public convenience and necessity for service into the affected area was amply shown both by the evidence before the Commission on Jan. 7, 1957, and the independent testimony before the Court, that the Commission at all times had treated AAA's application as one for extension of existing rights and not for intra-town service, that the effect of the April 23 limitation was to limit AAA's service in the new

area to intra-town service between towns therein, which limitation AAA had not sought and the need of which was not supported by the evidence, that the public convenience and necessity requiring the service authorized by the order of January 7 was severely restricted by the limitation, and that the limitation of April 23 was contradictory and self-negating (R. 495-499, Appendix B).

The Court thereupon entered its decree declaring that the limitation of April 23, 1957, was arbitrary, illegal, null and void and was "upon construction so contradictory and self-negating that it is void and of no effect" (R. 498, Appendix B).

Again it is undisputed from the record that the only thing before the trial court was a construction of the April 23 order, which purportedly placed an ambiguous limitation, one difficult in compliance and unduly restrictive in scope, upon the former January 7 order.

Everyone—the commission, the intervenors and petitioner—was agreed that AAA had some rights of service into the new area. The question was, how much right?[2]

With the case thus decided by the trial court, the Commission and some of the intervenors (constituting the respondents herein) appealed to the Alabama Supreme Court (R. 500, 501). The respondents raised before that court two major points: (1) that the trial court was without jurisdiction since declaratory judgment was an improper remedy, and (2) that the April 23 order was not illegal or arbitrary or contradictory or self-negating, but that it was legal, valid and supported by the evidence, by judicial laws and statutes (R. 535-537, Assignment of Errors). Of

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[2] The trial court could have properly made three declarations: that the limitation was of no effect, so as to give AAA the right to "tack-on" the new area to its existing areas of service; that the limitation was prima facie valid so that AAA could only operate intra-town in the new area of service; that the limitation was valid as to some towns and areas, but not as to others.

course, petitioner supported the trial court's decree in all respects before the Alabama Supreme Court (R. 538).

Again, all the parties and the court were involved with the common endeavor of seeking a proper and correct answer to a judicial-administrative construction problem. All of the parties agreed that AAA had some right and the public had some right, supported by the public convenience and necessity, of service into the new area. The question was whether this service by AAA was to be unlimited or limited, and if limited, in what degree.[3]

On March 23, 1961, the Alabama Supreme Court entered its decision and judgment, with one Justice dissenting, stating in part (Appendix A):

> "An inspection of the orders of January 7 and April 23 shows, as we view it, an ambiguity on the face of the orders." 131 So. 2d at 178.
>
> ". . .
>
> "The January order and the April order are contradictory. The orders cannot coexist, the latter nullifies the former." At page 179.
>
> ". . .
>
> "We have undertaken to show that the trial court correctly found that the grant and the limitation placed on the grant are contradictory. The real question is whether the circuit court correctly set aside part of the order and left part of the order in effect." At page 179.
>
> ". . .
>
> "If the restriction here imposed in April be eliminated, the final order of the Commission will grant to AAA an unrestricted authority to operate between

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[3] The appeal presented the same questions to the Alabama Supreme Court as were presented to the trial court. See note 2, supra.

points authorized to be served prior to January. The Commission has not granted such unrestricted operating authority, and we cannot find from the order that the Commission intended to grant it. As a result, the April restriction cannot be rejected without causing the remainder of the order to grant authority the Commission never intended to grant. Consequently the entire order must fall." At pages 180, 181.

". . .

"In short, the January order gave and the April order took away operating authority. Consequently the orders have no effect. The Commission has power to grant operating authority, but the courts do not have that power, and, therefore, the courts cannot rewrite the orders so as to grant authority the Commission has not granted."

"The decree appealed from is affirmed in the holding that the orders of January and April taken together are ambiguous and void for uncertainty, but the decree is reversed as to the holding that AAA has the right to exercise the authority granted in the January order without restriction or limitation. It does not appear that any good purpose would or could be served by remanding the cause and a decree will be here rendered in accordance with this opinion."

This decision of the Alabama Supreme Court effectively took away from Petitioner and deprived the general public of all rights for petitioner to serve the new area, rights which had been thrice found supported by the public's convenience and necessity, even the limited right of intra-town service in the new area to which all parties agreed petitioner was entitled. This decision left petitioner and the public at large shipping inter-state goods with no remedy, no tribunal, and no procedure to protect their undisputed right of intra-town service, a service in which petitioner has continuously and rightfully engaged for

over four years, and a service to which no person or party had objected in this proceeding.

It is this act of the Alabama Supreme Court, done unexpectedly at the end of a long proceeding, upon which petitioner bases its writ.

There was no occasion or necessity or need to present the question of the unconstitutionality of the Alabama Supreme Court's decision to that Court. Petitioner raised questions of unconstitutionality of the decision at the earliest possible time in its "Petition for Stay of Mandate" to that Court on June 28, 1961 (R. 526, Appendix E). For "good cause shown" in said petition, that Court on the same date granted the stay of its mandate and allowed petitioner sixty days from the date denying petitioner's rehearing to "file its petition for a Writ of Certiorari in the Supreme Court of the United States for the purpose of reviewing the decision of this Court in this cause" (R. 528, Appendix F).

For authority supporting petitioner's timely presentment of the constitutional questions involved in this writ, we respectfully refer the Court to **Saunders v. Shaw**, 244 U. S. 317.

REASONS FOR GRANTING THE WRIT.

A cursory review of the many Federal cases holding acts by a state to be repugnant to the due process clause of the Fourteenth Amendment reveals that it is indeed an unusual thing for the act complained of to be the act of the highest tribunal of a state done in the process of rendering a judicial opinion. Nonetheless, as this Court recently observed through Mr. Justice Harlan in **National Asso. for the A. C. P. v. Alabama**, 357 U. S. 449, 463:

> "It is not of moment that the State has here acted solely through its judic[illegible] branch, for whether legis-

> lative or judicial, it is still the application of state power which we are asked to scrutinize."

And it is likewise of no moment whether the State judiciary effectively deprived petitioner of his procedure (**Saunders v. Shaw**, 244 U. S. 317; **Brinkerhoff-Faris Trust & Sav. Co. v. Hill**, 281 U. S. 673), or of his property (**Chicago, B. & O. R. Co. v. Chicago**, 166 U. S. 266) without due process of law.

Saunders v. Shaw, supra, 244 U. S. 317, is strikingly similar to this case. There the Louisiana Supreme Court by virtue of its opinion deprived plaintiff in error of procedural due process. The claim of due process was first made in the assignment of errors filed in the state court seeking Federal review. These assignments were filed shortly after that court had refused to consider an application for rehearing. Likewise, petitioner here first raised the claim of due process in the grounds of its petition for stay of mandate to the Alabama Supreme Court after that Court had refused to consider an application for rehearing.

Against the contention in **Saunders v. Shaw** that the writ of error could not be maintained because of untimely presentment of the constitutional questions, this Court through Mr. Justice Holmes held (244 U. S. at 320):

> "The question remains whether the writ of error can be maintained. The record discloses the facts but does not disclose the claim of right under the 14th Amendment until the assignment of errors filed the day before the chief justice of the state granted this writ. Of course ordinarily that would not be enough. But when the act complained of is the act of the supreme court, done unexpectedly at the end of the proceeding, when the plaintiff in error no longer had any right to add to the record, it would leave a serious gap in the remedy for infraction of constitutional

rights if the party aggrieved in such a way could not come here. The defendant was not bound to contemplate a decision of the case before his evidence was heard, and therefore was not bound to ask a ruling or to take other precautions in advance. The denial of rights given by the 14th Amendment need not be by legislation. Home Teleph. & Teleg. Co. v. Los Angeles, 227 U. S. 278, 57 L. ed. 510, 33 Sup. Ct. Rep. 312. It appears that shortly after the supreme court had declined to entertain the petition for rehearing the plaintiff in error brought the claim of constitutional right to the attention of the chief justice of the state by his assignment of errors. We do not see what more he could have done."

"Judgment reversed."

See, also, **Brinkerhoff-Faris Trust & Sav. Co. v. Hill**, supra, 281 U. S. 673, 677-8.

And, of course, this Court may examine the opinion of a state court in order to ascertain the patent unconstitutionality of its legal effect. **Kreiger v. Shelby R. R. Co.**, 125 U. S. 39, 45; **Chicago, B. & O. R. Co. v. Chicago**, supra, 166 U. S. at 232.

This case is simple in scope. Petitioner is a common carrier with rights based on the public convenience and necessity before January 7, 1957, to operate intra-state in "X" area. On that date it was given by the Commission rights based on public convenience and necessity to operate in "Y" area. On April 23, 1957, the Commission limited the rights granted in "Y" area. A dispute arose between petitioner on the one hand and the commission and intervening carriers on the other as to the quantum of service to be supplied by petitioner in "Y" area. The issue was presented to the state trial court and the parties agreed to an adjudication by that court of the issue of quantum of service into "Y" area.

At no time was there dispute as to whether petitioner had rights—the question was the quantum or amount of rights. The trial court ruled favorably to petitioner. The respondents appealed. The state court held, in effect, that because the quantum of rights into "Y" area was vague or ambiguous, petitioner therefore had **no** rights of service into the area. The decision was in the teeth of the facts that (1) petitioner had operated in "Y" area in both a limited and unlimited manner continuously for over four years, (2) that the public convenience and necessity demanded some operation; (3) that the only dispute was the quantum of operation, and (4) that no party had denied the fact of some rights into the area.

By virtue of the opinion, petitioner lost its undisputed limited rights of operation and lost any and all procedures and tribunals theretofore available to it for preservation of its limited rights.

Petitioner contends that this action by the Supreme Court of Alabama—

—deprived it of procedural due process in violation of the Fourteenth Amendment.

—deprived it of substantial property rights guaranteed by the 14th amendment.

—deprived the public at large its rights of limited service into the affected area in violation of the 14th amendment.

—was unconstitutional as an undue restraint on commerce in violation of Article 1, Section 8, Clause 3 of the Constitution.

(a) **Procedural Due Process.**

The express effect of the Court's action in rendering the issue before it (rather than affirming, remanding or modifying the lower decree) was to **void** not only the dis-

puted right of unlimited service but also **the undisputed right of limited service.**

The course of action which the Court could have taken most unfavorably to petitioner (within the contemplation of reasonable men) was to hold the April 23rd limitation valid in toto. Even with this decision petitioner would have retained its limited rights of service.

In that event the procedure then open to petitioner would be to apply to the Commission for an amendment or change of its March 23 order. **Smith Transfer Co. v. Robins Transfer Co.**, 253 Ala. 406, 63 So. 2d 351. And **petitioner could continue to operate with its then limited rights until the Commission ruled on its application for amendment.** The ruling could, if unfavorable, be appealed directly to a trial court, Title 48, Sec. 79, 301 (27), **Code of Alabama** (1940), as amended, or the Commission's ruling could be construed by declaratory judgment as in the case at bar.

In any and all events petitioner would have retained its limited rights of service and these rights would have been protected by the courts, statutes, and laws of Alabama.

Obviously, by the Court's decision petitioner lost **all** of its guaranteed procedural rights outlined above. It could seek no procedural review or amendment of the April 23 order because the order was void and non-existent. It could no longer engage in limited service. The only course of action open to it was to submit a new petition for amendment of its certificate and seek *de novo* some service into area "Y", and thus be forced to abstain from rendering any service into area "Y", until the Commission through its slow and creaking process[4] entered its order.

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[4] As stated earlier, the original petition for amendment in this case was filed on October 7, 1955. It was January 7, 1957 before the order was issued—a time lapse of 15 months.

Petitioner, therefore, was given no opportunity by the Alabama Court's decision to protect its rights into area "Y" because those rights were voided. This Court has censured such decisions:

> "Whether acting through its judiciary or through its legislature, a state may not deprive a person of all existing remedies for the enforcement of a right, which the state has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it." Brinkerhoff-Faris Trust & Sav. Co. v. Hill, supra, 281 U. S. 673, 682.

The actions of the Supreme Court of Alabama, therefore, amounted to a flagrant procedural due process violation. Such action by state supreme courts has been and should be often struck down by this court. **Saunders v. Shaw**, supra, 244 U. S. 317; **Brinkerhoff-Faris Trust & Sav. Co. v. Hill**, supra, 281 U. S. 673; **In re Frederick**, 149 U. S. 70. And particularly should this court carefully scrutinize such final state court decisions, for they come late in the game, with clandestine and devastating effect on the unsuspecting party.

(b) and (c) The Taking of Substantive Property Rights.

Petitioner has shown that the Alabama Supreme Court's decision voided all of its limited rights of service into the new area. This was no less that the taking of property by the state without compensation therefor. Not only were the rights of limited service cancelled or taken from petitioner, but the public at large, of whose convenience and necessity the rights were established, were deprived of all service by petitioner.

There is no doubt that such rights of service are valuable property rights under Alabama law and can only be withdrawn by judicial due process. This has been recognized by Alabama and other courts. **Alabama Public**

Service Com. v. So. Bell T. & T. Co., 253 Ala. 1, 42 So. 2d 655; **Lash v. State**, 244 Ala. 48, 14 So. 2d 229, answer to cert. q. conformed to 31 Ala. App. 121, 14 So. 2d 235. See also **Alabama Publ. Serv. Com. v. So. Ry. Co.**, 341 U. S. 341; **Louisville Ferry Co. v. Kentucky**, 188 U. S. 395; **State v. Board of R. R. Com'rs**, 131 Mont. 9, 306 P. 2d 264.

And the voidance of all of petitioner's service into the affected area involves not only the great economic loss to petitioner from having to completely withdraw from an area after long-continuous service, but the important factor of local need for the service rendered gives the public at large an important right in the matter. As this court observed in **Alabama Pub. Serv. Com. v. Southern R. Co.**, 341 U. S. 341, 346-7:

> "We do note that in passing upon similar contentions in the past, this Court has recognized that review of an order requiring performance of a particular utility service, even at a pecuniary loss, is subject to considerations quite different from those involved when the return on the entire intrastate operations of a utility is drawn into question. Atlantic Coast Line R. Co. v. North Carolina Corporation Commission, 1907, 206 U. S. 1, 24-27. The problems raised by the discontinuance of trains Nos. 7 and 8 cannot be resolved alone by reference to appellee's loss in their operation but depend more upon the predominantly local factor of public need for the service rendered. Chesapeake & Ohio R. Co. v. Public Service Commission of West Virginia, 1917, 242 U. S. 603, 608."

Under the Alabama Court's decision, both the petitioner and the public were deprived of the important property right of limited service into the affected area in violation of due process of law. See **Chicago, B. & O. R. Co. v. Chicago**, supra, 166 U. S. 266; **Ry. Comm. of Calif. v. Pacific G & E Co.**, 302 U. S. 388.

(d) **The Commerce Clause.**

We respectfully submit that where there has been a quasi-judicial and a judicial determination that the public convenience and necessity require service by a common carrier under a grant of intra-state right, and a majority of the goods carried by said carrier in the exercise of such rights are goods moving in interstate commerce, and a State Supreme Court without regard to the public convenience and necessity deprive the public at large of all service by a common carrier under such rights on the grounds that there is doubt as to the exact quantum or amount of service intended to be authorized, then the decision imposes an undue and unnecessary restriction and burden on commerce in violation of the "Commerce Clause" of the United States Constitution.

There is no statute, no police power and no administrative regulation involved. What is involved is a cessation of service of a common carrier into a particular area from which interstate goods are shipped, and the cessation was brought about in the face of the established fact that the public convenience and necessity demanded such service. The public, therefore, was deprived of the service which it enjoyed and needed. It could no longer ship its goods within or without the state with convenience. We submit that the decision of the Alabama Supreme Court under the circumstances at bar created an effective and unnecessary burden on commerce between the several states in violation of Article 1, Section 8, Clause 3, of the United States Constitution.

CONCLUSION.

The Alabama Supreme Court failed to apply judicial due process standards in its opinion and judgment rendered in this case below. By virtue of this failure petitioner has been deprived of both its property and all procedure for

protection of its property. The public at large has been deprived of a valuable property right as a result of the said decision, and the decision unduly interfered with commerce between the states.

Without a reversal of the decision by this Honorable Court, petitioner will be done a grave unconstitutional injustice by an arm of the State of Alabama and will be left without remedy or right.

TRUMAN HOBBS,

JOHN C. GODBOLD,

EUEL A. SCREWS, JR.,
Counsel for Petitioner.

Certificate of Service.

I hereby certify that I have served a copy of the foregoing petition for certiorari upon the Hon. MacDonald Gallion, Attorney General of the State of Alabama, one of the attorneys for the Alabama Public Service Commission, and on Maurice F. Bishop, Jr., Attorney for P. C. White Truck Lines, Inc., a corporation, and James R. Caton, d b/a Caton Transfer Company, by depositing the same in a United States Post Office with first-class postage prepaid addressed respectively to Hon. MacDonald Gallion, Judicial Building, Dexter Avenue, Montgomery, Alabama, and Maurice F. Bishop, Jr., Esquire, Frank Nelson Building, Birmingham, Alabama, this the ..... day of August, 1961.

Euel A. Screws, Jr.,
Attorney for Petitioner.